

Mr A. E. Allen

BEACHLANDS DOMAIN BOARD EMPOWERING

[LOCAL]

ANALYSIS

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A BILL INTITULED

An Act to confer certain powers on the Beachlands Domain Board, and in particular authorising and empowering it to apply certain moneys held in trust for the charitable purpose of building a public hall upon the lands known as the Beachlands Domain, in such manner as it deems fit, in developing and effecting improvements to and in providing amenities for any public domain and public reserve under its control and management

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WHEREAS certain lands more particularly described in the Schedule to this Act and known as, and in this Act referred to as, the Beachlands Domain are vested in Her Majesty the Queen as a public domain: And whereas the said lands are controlled and administered by the Beachlands Domain Board as the administering body thereof duly constituted under the provisions of the Reserves and Domains Act 1953: And whereas between the years nineteen hundred and thirty-five and

nineteen hundred and fifty-one certain moneys were from time to time raised in diverse manners by way of voluntary contribution, by the sale of goods voluntarily contributed, by moneys paid as the price of admission to entertainments, and otherwise, and all such moneys were paid to and received by the Beachlands Domain Board for the purpose of erecting a pavilion or hall on part of the Beachlands Domain for the use of and by the general public: And whereas by notice published in the *New Zealand Gazette* on the twenty-fourth day of March, nineteen hundred and fifty-two, under the provisions of section 48 of the Public Reserves and National Parks Act 1928 (now section 47 of the Reserves and Domains Act 1953) the Manukau County Council, being the local authority of the body corporate called the Chairman, Councillors, and Inhabitants of the County of Manukau, was appointed to be the Beachlands Domain Board in respect of the Beachlands Domain: And whereas consequent upon and subsequently to the appointment of the said Council as the Beachlands Domain Board in the manner and at the time aforesaid the said moneys (in this preamble hereinafter referred to as the pavilion or hall fund) were deposited in an account number 878464 of the Post Office Savings Bank at Auckland in the joint names of the said body corporate and of Walter Stanley Hopping, of Omana Beach, near Whitford, retired, and Arthur Edgar Ashcroft, of Auckland, County Clerk: And whereas the Beachlands Ratepayers Progressive Association, a society duly incorporated under the provisions of the Incorporated Societies Act 1908 (in this preamble hereinafter referred to as the association), or its predecessor in title, has now erected a hall at Beachlands on certain freehold land acquired by and now vested in the association as registered proprietor thereof but such land is not and never has been the Beachlands Domain or any part thereof: And whereas by a writ of summons issued on the sixteenth day of September, nineteen hundred and fifty-seven, out of the Supreme Court of New Zealand at Auckland in a certain action number 382/57 against the said body corporate and the said Walter Stanley Hopping and the said Arthur Edgar Ashcroft as defendants, the association, as plaintiff in the said action claimed, *inter alia*, a declaration that the pavilion or hall fund and all interest accrued due thereon had been received by such defendants and was held by them in trust for the Association for the purpose of the erection of a hall at Beachlands and for the taking of accounts as to the moneys withdrawn from the pavilion or hall fund and judgment in

favour of the association for the amount (if any) found to be due to it: And whereas the said action duly came on for trial in the said Supreme Court before the Honourable Mr Justice Shorland on the twenty-third day of September, 5 nineteen hundred and fifty-eight: And whereas on the twenty-fourth day of November, nineteen hundred and fifty-eight, it was adjudged in the said action, *inter alia*, that the pavilion or hall fund is held in trust by the said body corporate and the said Walter Stanley Hopping and the said Arthur Edgar 10 Ashcroft to be applied to the charitable purpose of building a public hall upon the Beachlands Domain: And whereas no such hall has yet been built upon the Beachlands Domain or any part thereof and in consequence and because of the erection of a hall on the land owned by the association at 15 Beachlands as aforesaid it has now become undesirable, impracticable, and inexpedient to carry out the charitable purpose for which the pavilion or hall fund is held in trust as aforesaid, namely, the erection of public hall on the Beachlands Domain or any part thereof, and such charitable purpose 20 is therefore now useless: And whereas on account of the nature and diversity of the contributions made to the pavilion or hall fund and because of the lapse of time since such contributions were made it is impossible to establish and identify the contributors to the pavilion or hall fund or to comply with 25 the provisions of the Charitable Trusts Act 1957 in respect thereof: And whereas by reason of the matters aforesaid it is desirable to make provision that the pavilion or hall fund should be expended and applied in and towards the general purposes hereinafter set forth without further depletion thereof 30 than was occasioned by the costs of the said action (otherwise than as is provided for in this Act):

BE IT THEREFORE ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:

35 **1. Short Title**—This Act may be cited as the Beachlands Domain Board Empowering Act 1961.

2. Interpretation—In this Act, if not inconsistent with the context,—

40 “Board” means the Beachlands Domain Board constituted under the provisions of the Reserves and Domains Act 1953:

“Charitable purpose” means a charitable purpose as defined in section 38 of the Charitable Trusts Act 1957:

“Corporation” means the body corporate constituted by the Counties Act 1956 under the name of the Chairman, Councillors, and Inhabitants of the County of Manukau: 5

“Public domain” and “public reserve” shall have the meanings assigned to those terms respectively in and by the provisions of the Reserves and Domains Act 1953. 10

3. Authorising expenditure and application of trust fund in development, etc., of public domains and public reserves—

Notwithstanding anything to the contrary in this Charitable Trusts Act 1957, and in particular Part IV thereof, or in any other Act or in the judgment of the Supreme Court in the said action number 382/57, the Board and the Corporation and the said Walter Stanley Hopping and the said Arthur Edgar Ashcroft are, and each of them is, hereby authorised and empowered from time to time to expend and apply all or any part of the said moneys now deposited and held in the said account number 878464 of the Post Office Savings Bank at Auckland for the charitable purpose of building a public hall upon the Beachlands Domain, being the lands more particularly described in the Schedule hereto, and all interest now accrued and hereinafter to accrue due thereon (hereinafter referred to as the said trust fund) in such manner as the Board or the Corporation shall from time to time think fit in the general development of and in effecting improvements to and in the provision of amenities for any public domain or public reserve which may at any time be under the control and management of the Board, including the lands described in the Schedule to this Act. 15
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4. Expenses of promoting Act to be paid out of trust fund—

The costs of promoting this Act and of investigating all matters preparatory and incidental thereto, including all disbursements and legal expenses and whether incurred by the Board or the Corporation, shall be paid and discharged by the Board or by the Corporation and the said Walter Stanley Hopping and the said Arthur Edgar Ashcroft out of the said trust fund. 35
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5. Validation of expenditure and payments previously made—All such expenditure and any such payments (if any) made out of the said trust fund at any time before the passing of this Act are hereby validated and declared to have been
5 validly and lawfully made.

SCHEDULE

ALL those parcels of land vested in Her Majesty the Queen as a Domain within the meaning of the Reserves and Domains Act 1953 and known as the Beachlands Domain, being the recreation reserves numbered Lots 40 and 1130 on Deeds Plan No. 619, and Lots 108, 114, 157, 167, 175, and 1131 on Deposited Plan No. 19657, all being part of Allotments 17 and 44 of the Parish of Maraetai, containing together 7 acres 1 rood 38·8 perches situated partly in Block IV of the Otahuhu Survey District and partly in Block I of the Wairoa Survey District.

Also all that parcel of land containing 7 acres 2 roods 35 perches, more or less, being Section 1, Block IV, of the Otahuhu Survey District, known as Motukaraka Island.